

82D CONGRESS
2d Session

} HOUSE OF REPRESENTATIVES {

REPORT
No. 2394

DEWEY J. CRITES, JACK MAYTA, AND JAMES WILLETTE

JULY 1, 1952.—Committed to the Committee of the Whole House and ordered to
be printed

Mr. GOODWIN, from the Committee on the Judiciary, submitted the
following

REPORT

[To accompany H. Res. 709]

The Committee on the Judiciary, to whom was referred the resolution (H. Res. 709) for the relief of Dewey J. Crites, Jack Mayta, and James Willette, having considered the same, report favorably thereon without amendment and recommend that the resolution do pass.

The purpose of the proposed resolution is merely to refer H. R. 1918, a bill for the relief of Dewey J. Crites, Jack Mayta, and James Willette to the United States Court of Claims for hearing and determination and report its findings to the Congress. Your committee is of the opinion that this is a case that should be referred to the court; therefore, recommend favorable consideration to the resolution.

[H. R. 1918, 82d Cong., 1st sess.]

A BILL For the relief of Dewey J. Crites, Jack Mayta, and James Willette

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated to Dewey J. Crites, Cle Elum rural route 2, Washington the sum of \$18,000; to Jack Mayta, Cle Elum rural route 2, Washington, the sum of \$17,000; and to James Willette, Cle Elum rural route 2, Washington, the sum of \$12,000. The payment of such sums shall be in full settlement of all claims of the said Dewey J. Crites, Jack Mayta, and James Willette against the United States on account of damage to their farms from erosion and floods resulting from the control of the Yakima River for irrigation purposes by the Bureau of Reclamation of the Department of the Interior. Under the decision of the United States Court of Appeals for the Eighth Circuit in Coates against United States (181 F. (2d) 816 (1950)) action upon such claims may not be brought under the provisions of title 28 of the United States Code relating to tort claims because such claims are based on the exercise of a discretionary function or duty by the Bureau of Reclamation: *Provided*, That no part of the amount appropriated in this Act for the payment

of any one claim in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with such claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington 25, D. C., May 15, 1951.

Hon. EMANUEL CELLER,
Committee on the Judiciary, House of Representatives,
Washington 25, D. C.

MY DEAR MR. CELLER: Your committee has asked for an expression of my views on H. R. 1918, a bill for the relief of Dewey J. Crites, Jack Mayta, and James Willette.

I recommend that this bill be not enacted.

The bill directs payment of \$47,000 out of the Treasury of the United States to three landowners in the vicinity of Cle Elum, Wash., as compensation "for damage to their farms from erosion and floods resulting from the control of the Yakima River for irrigation purposes by the Bureau of Reclamation * * * ." The responsibility of the United States for damage sustained by these landowners is thus predicated upon use of the river channel for delivery of irrigation water to lower valley lands which, it appears to be thought, imposes an all-inclusive obligation for maintenance of the channel.

The superintendent of the Yakima project has examined the land of the claimants and reports that erosion of the claimants' land is the result of flood flows which deposit gravel bars in the main channel of the river and thus divert subsequent flow to the north or subsidiary channel and numerous overflow channels. I am advised that the claimants concur in this finding by the superintendent of the Yakima project. The condition which has resulted in serious damage to the Crites, Mayta, and Willette farms dates back to the flood of 1933 which deposited a gravel bar in the south channel and thus directed the main flow into the north channel. This condition has become worse and worse and the flood of 1948 caused serious damage. Of approximately 300 acres in the three farms that are badly cut up with overflow channels, only about 60 acres are still useful for farming operations.

None of this, however, is the result of the use of the Yakima River channel for delivery of irrigation water to lower lands. Damage occurs when the river flow exceeds 2,200 cubic feet per second. The operations of the Bureau of Reclamation on the Yakima River entail storage of water during the flood season. This materially shortens the periods in which river flow exceeds 2,200 cubic feet per second and lengthens the periods in which the flow is less than 1,000 cubic feet per second. I cannot accept the proposition that, merely because it utilizes the river channel to deliver irrigation water from storage reservoirs during the last half of the irrigation season, the Government should be charged with responsibility for any and every condition of the Yakima River channel which results in damage to riparian landowners. The limit of its responsibility for maintenance of the river channel and the limit of the responsibility of landowners who receive irrigation water delivered by means of the river channel should be the adverse effect of such delivery upon the lands bordering the river channel.

A solution for the immediate relief of the landowners designated in H. R. 1918 would be to cut a new channel about one-half mile long, thereby eliminating a sharp bend in the river which is steadily moving northward. This is, of course, a flood-control operation which should be undertaken by the State or Federal agency vested with responsibility for such function.

I believe that the solution proposed by H. R. 1918 should not be resorted to because measures which will alleviate the flood menace to these landowners are still possible and because the bill erroneously assigns responsibility for the current menace to manipulation of river flow by the Bureau of Reclamation.

The Bureau of the Budget has advised that there is no objection to my presentation of this report to your committee.

Sincerely yours,

WILLIAM E. WARNE,
Assistant Secretary of the Interior.

BOARD OF COUNTY COMMISSIONERS, KITTITAS COUNTY,
Ellensburg, Wash., May 23, 1951.

Hon. HAL HOLMES, MEMBER OF CONGRESS,
House of Representatives, Washington, D. C.

DEAR MR. HOLMES: Regarding property owned by Dewey Crites, John Mayta, and James Willette on the Yakima River near Teanaway Junction in Kittitas County, Wash., I have made the following observations:

(1) The water during irrigation season is kept at such a high level that improvement for farming or pasturing is impossible.

(2) This is due to the fact that the Bureau of Reclamation uses the river as part of their distribution system.

Very truly yours,

S. A. SORENSON,
County Commissioner, Kittitas County, Wash.

Subscribed and sworn to before me this 23d day of May 1951.

[SEAL]

ROWLAND M. JONES,
Notary Public.

STATE OF WASHINGTON,
County of Kittitas, ss:

I certify that I, John Hanks, Jr., have personally looked over the farms owned by James Willette, Jack Mayta, and Dewey Crites in regard to the damage being caused by the excessive high water throughout the farming season. This high water is caused by the large volume of water released by the Reclamation Service from the reservoirs on the lakes above the farms mentioned. The river channel at this point on the Yakima River, due to bends and erosion which has filled the old channel with rock and gravel, will not carry off the water, forcing the water over the farms in question and causing serious erosion on same.

This condition makes it impossible to farm or improve these properties.

I also wish to add that, before the Reclamation Service took a hand in river flow control, this land was farmed and pastured by the present or the previous owners.

Many requests have been made to the Reclamation Service for help in correcting the situation, but to no avail.

JOHN HANKS, Jr.,
Chairman of the Kittitas County Flood Control Committee for the Yakima River.

Subscribed and sworn to before me this 23d day of May, 1951.

[SEAL]

LEONARD F. BUNAGE,
Notary Public in and for the State of Washington.

KITTITAS COUNTY ENGINEER,
Ellensburg, Wash., May 22, 1951:

Hon. HAL HOLMES,
House of Representatives, Washington, D. C.

DEAR SIR: The following remarks are written as evidence of damages to Dewey J. Crites, John J. Mayta, and James T. Willette from the Yakima River near Teanaway Junction in Kittitas County, Wash.

I hereby certify that Dewey J. Crites, John J. Mayta, and James T. Willette are—

(1) Owners of land situated in or near to secs. 4 and 5 of T. 19 N., R. 16 E., Willamette meridian, and

(2) That the Yakima River does flow through the property of those mentioned above and does cause serious damage due to flooding.

(3) From a total acreage owned by Dewey Crites of 120 acres only about 7 acres are farmable on account of the river flooding. From a total acreage of 92 owned by Mr. Mayta only about 7 acres are farmable on account of the river flooding. From a total of 30 acres owned by Mr. James T. Willette only about 3 acres can be farmed on account of the flooding of the river.

(4) The flooding of the river has taken all pasture lands of all three property owners.

(5) The condition of the river and the uncertainty of what it will do next has kept these property owners from going ahead with all and any needed improvements.

Sincerely,

ROWLAND M. JONES,
Kittitas County Road Engineer.

Subscribed and sworn to before me this 22d day of May 1951.

[SEAL]

GERALD S. PORTER,
Notary Public.

DECEMBER 30, 1950.

Hon. HAL HOLMES,
United States Representative, Washington, D. C.

DEAR SIR: We three undersigned persons, Dewey J. Crites, Jack Mayta, and James Willette, are writing you in an effort to have something done to preserve our farm homes.

We each own a farm in the upper Kittitas Valley near Teanaway. These farms are located along the Yakima River. Prior to the time the Reclamation Bureau assumed control of the river for irrigation purposes our farms were valuable and productive. Now, because of the Reclamation Bureau's policy in prolonging the periods of high water level a great part of our land is in effect confiscated—since due to the prolonged flood periods the land can be utilized for neither pasture nor the raising of crops.

The Bureau of Reclamation controls the Yakima River. It determines how much water shall be allowed to run in its channel. It sells this water to the various water users. Yet, in spite of all this it disclaims responsibility for its acts, states that if anyone is hurt the Bureau is not interested, arbitrarily and dictatorially and deliberately ruins the lands of some farmers along the upper channels of the river in order to make an increased volume of water available for sale to other farmers along the lower reaches of the river.

We know that you as our representative have been doing your best to assist us in having this unjust situation remedied. We feel, however, that it may not have been brought to the attention of Senators Cain and Magnuson and the other representatives from our State of Washington. We are therefore enclosing newspaper clippings which will verify our account of the situation. And, to refresh your memory and to make the situation clear to our other Senators and Representatives, we shall briefly relate the history of this problem.

Prior to the year 1905 our lands acquired water rights in the Yakima River¹ earned by the labor of pioneers in hand clearing and irrigating, turning into productive farm land what was once a wilderness. After that time, the State of Washington assumed control, and in 1931 permit No. 98, effective as of May 10, 1905, was granted to the United States Bureau of Reclamation to store water in Lakes Keechelus, Kachess, and Cle Elum for irrigation, domestic, and power uses. Since that time the Bureau of Reclamation has regulated and controlled the amount of water in the Yakima River.

The Bureau has adopted a policy of storing water in the above reservoirs and releasing these waters during the spring and summer months, selling them to farmers for irrigation purposes. This maintains the river level at an unnaturally high level during the spring and summer months, keeping a great part of our farms continuously inundated during the periods when they in previous years were normally put to productive use. We are thus deprived of the use of the greater part of our farms, to our great financial loss. There is thus a taking and confiscating of our property without due process of law and without compensation of any kind to us.

We have taken up the matter with the Reclamation Bureau. The Bureau, through its representatives, has maintained a consistently evasive and dictatorial policy. It is dictatorial in that the Bureau each year, through the release of additional waters, floods and erodes more and more of our land; and when we protest, we are told by men such as Mr. Paul Taylor, Bureau hydrographer at the Yakima office, that "We operate strictly for the benefit of the men who pay storage and water costs—the reclamation farmers." Implying, of course, that we farmers whose lands are damaged by their policies will just have to take it and like it. As Taylor said, "They (we) wanted to know what I was going to do about it. I told them 'nothing'." We feel that we do not have to take it and we do not have to like it and we feel that as citizens and taxpayers we have the right to

petition our Government to do something about it and the right to expect that our Government will do something about it.

In an obvious attempt to shift responsibility, Taylor stated that the flood condition resulted merely from debris piled up in the river, and that "a bulldozer could clear the channel block in a few hours." He thus implied it is a local problem. Yet, when the problem was investigated by the proper engineers during the flood-control project program of 1949 and 1950, the United States engineers authorized flood-control projects in many places in the Kittitas Valley along the Yakima River, but rejected our request for protection and flood control on the ground that the estimated cost, about \$50,000, was excessive in view of the value of the land to be protected.

We feel that if the Government is going to take our land away from us it should pay us for it by proper condemnation methods. Under our American way of life it is no less a crime for the Government to take property without due process and proper compensation than it would be for a private individual to do the same thing.

The Bureau maintains the attitude that it is not liable for the damage its policies wreck; that it can skim off the profits of its water sales without paying for the cost of its operations.

We appeal to you especially for prompt action now, since the Bureau is planning to open up an additional 26,000 acres of land to irrigation by waters of the Yakima River which must come from the three reservoirs above our farms. We have our life earnings invested in these farms, and our bread and butter comes from them, so you can see that, although the few thousands of dollars involved may be infinitely small and unimportant in our multibillion dollar national budget, the problem is of great magnitude to us. The clippings enclosed, from the August 7, 1949, and April 16, 1950, issues of the Yakima Sunday Herald, and from the June 17, 1948, July 18, 1949, July 25, 1949, September 26, 1949, and July 17, 1950, issues of the Ellensburg Daily Record, will greatly enlarge upon and corroborate this history of our problem.

We thank you, Representative Holmes, for the past work in our behalf. We know that you will bring this letter and the attached clippings personally to the attention of our Washington State Senators and the other Washington State Representatives, and that among you a plan will be evolved and action taken. We ask that a bill be introduced in Congress to reimburse us for our loss and that prompt action be taken to protect or to purchase our farms.

The representatives of the Bureau of Reclamation in this area may be in a position to dictate to us who are but small-scale farmers; we do not think they will dictate to our Congressmen.

Respectfully yours,

DEWEY J. CRITES,
Route 2, Cle Elum, Wash.
JACK MAYTA,
Route 2, Cle Elum, Wash.
JAMES WILLETTE,
Route 2, Cle Elum, Wash.

STATE OF WASHINGTON,
County of Kittitas, ss:

Dewey J. Crites, Jack Mayta, and James T. Willette, each being first duly sworn, for himself deposes and says: That he has read the above and foregoing letter, knows the contents thereof, and that it is all true, to the best of affiant's knowledge and belief. That affiants reside upon and own their respective farms above referred to, and are in a position to have first-hand knowledge of the facts above set forth:

DEWEY J. CRITES.
JACK MAYTA.
JAMES T. WILLETTE.

Subscribed and sworn to before me this 22d day of May 1951:

[SEAL]

JOHN McSHERRY, Jr.,
Notary Public in and for the State of Washington.

My commission expires September 13, 1951.

OCTOBER 12, 1950.

Hon. HAL HOLMES,
Washington, D. C.

DEAR MR. HOLMES: From time to time the Soil Conservation Service, operating through the Cle Elum soil conservation district, has been called on to assist farmers in the Teanaway area with the problem of flood control.

The three farms, belonging to D. J. Crites, Jack Mayta, and James Willette are the farms on which the problem is worst. The situation is completely beyond the financial ability of these farmers, individually or collectively, to remedy.

The flooding which continues throughout the irrigation season, has all but rendered these three farms useless. The Crites farm, consisting of 120 acres, has approximately 7 acres of usable land. The Mayta farm, with 92 acres of land affected, also has roughly 7 acres of usable land. The James Willette farm of 30 acres has only 3 acres of land that can be used.

Not all the unused land is covered by water during the irrigation season, but the numerous channels of floodwater which cross the farms make the remainder of the land inaccessible.

These farms have good productive soil, and are in an area of comparatively high priced land. The extent of loss suffered is indicated by the decline in yield of alfalfa on the Mayta farm. Mr. Mayta harvested 128 tons of hay prior to the period of flooding. Now he harvests less than 30 tons.

It seems unlikely that a program of flood control that will prove effective will be undertaken by any agency of Government. It is also obvious that these farmers cannot continue to make a living from these farms under present conditions.

In our opinion these farms are worth on the market, if the flooding were controlled, at least the following amounts: D. J. Crites farm of 120 acres, \$18,000; the Jack Mayta farm of 92 acres affected, \$17,000; and the James Willette farm of 30 acres, \$12,000. Comparable land in the immediate vicinity is selling for from \$250 to \$400 per acre, depending on location.

The annual crop damage, or loss, to these farmers for a period of a comparatively few years are in excess of this amount. Mr. Crites can demonstrate a \$1,500 per year crop loss; Mr. Mayta a \$2,000 annual loss; and Mr. Willette a \$1,500 loss. Mr. Willette's farm is smaller, and was used as an intensive poultry operation until flooding forced him to abandon the enterprise. These losses have occurred for four consecutive years and will continue indefinitely.

I trust that this information will be of some help to you in considering the claims presented to you by these farmers.

Very truly yours,

CECIL McCORMAC,
District Conservationist.

CLE ELUM, WASH., December 14, 1950.

Hon. HAL HOLMES,
United States House of Representatives,
Washington, D. C.

DEAR MR. HOLMES: Mr. James T. Willette one of the farmers in the Teanaway area where the flood problem is under consideration has asked me to write you regarding my knowledge of the value of his land.

I have lived in this locality for many years and have tried to keep up to date on land values.

If it were not for the flood conditions there I believe the value on this property at the present time not less than \$150 and not more than \$200 per acre.

Hoping this may be of value to you.

Sincerely,

ALFRED J. HANSON.

CLE ELUM, WASH., December 19, 1950.

Hon. HAL HOLMES,
Washington, D. C.

DEAR SIR: I have lived in this community for several years and somewhat familiar with Mr. Dewey Crites' problems. At present am farming but have followed building construction at times.

I believe that at the present prices of labor and material it would cost at least \$9,000 or \$10,000 to replace the improvements on Mr. Crites' farm. Will be glad to be of any help to you at any time.

Yours sincerely,

R. O. BALLARD.

ELLENSBURG, WASH., November 16, 1950.

Hon. HAL HOLMES,
Washington, D. C.

DEAR MR. HOLMES: I have had some of Jack Maytas property for sale and am somewhat familiar with the flood damage on the 92-acre tract lying between the railroad and the Yakima River. I have not, however, been trying to sell this particular tract as the flood situation there makes it quite unsalable.

The soil in this tract is of a very good, high-productive nature and prior to this flooding of the last few years it would produce good alfalfa and other crops. Now the tract is cut up with various channels of water making some of it inaccessible and where it isn't actually flooded the water table now remains so high that the land stays too wet to grow anything successfully. This condition seems to get worse each year, and has kept spreading over more land until at the present time there remains only about 7 acres of farmable land.

I do not know the exact extent of Mr. Mayta's financial loss from the difference in production now and before this flooding began but one can readily see that the damage for a period of years amounts to thousands of dollars.

Farm land of this type should sell for \$200 per acre, and up, in this locality, but, as I mentioned before, in its present condition the land is practically unsalable.

I trust this letter will be of value in adjusting the claim made by Mr. Mayta.

Sincerely yours,

WAYNE TURLEY.

○

